

IOWA BenchPress



Newsletter of the Iowa Judicial Branch

March-April 2001

More Budget Cuts Ahead

Late Monday, Republican legislative leaders unveiled their plan for the state's budget for fiscal year 2002. The Republicans plan to cut the total state budget \$198 million below the Governor's revised budget for the next fiscal year. Governor Vilsack's revised budget included tapping the state's emergency fund, action that Republicans oppose.

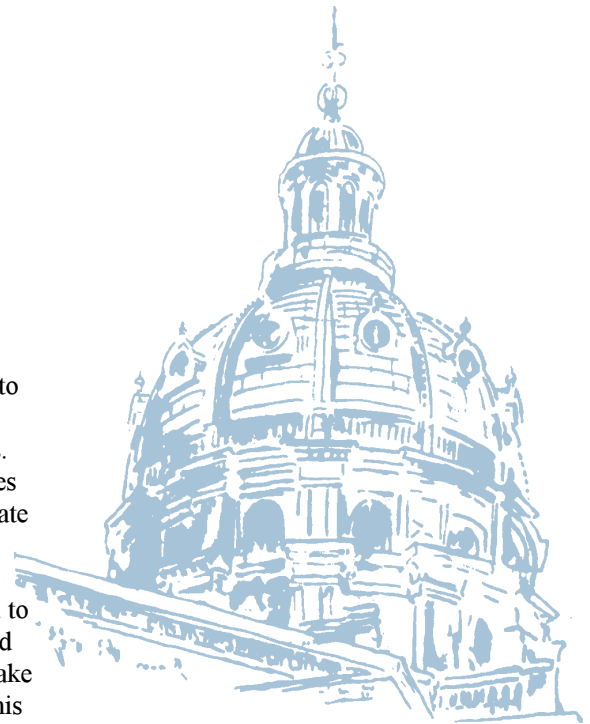
The budget proposed by Republicans would provide an additional \$1.7 million to the Judicial Branch for general operations. However, the big question mark for the Judicial Branch and the rest of state

government is the amount that will be appropriated to the salary adjustment fund.

Each year, the legislature appropriates money into the salary adjustment fund to cover the cost of providing salary increases to state employees and officials. The department of management manages and allocates the fund to the various state agencies and departments. It's not uncommon for the appropriation to be somewhat less than the amount needed to fund the full cost of salary increases and for the department of management to make a pro rata allocation to each agency. This is routine. However, next fiscal year the shortfall in the salary adjustment fund may end up being far from routine.

For the fiscal year 2002, Governor Vilsack recommended \$91 million for the salary adjustment fund. The Republican plan contains only \$55 million for this purpose, a move that would force state agencies and departments to absorb a significant amount of the salary increases that go into effect on July 1. This could translate into a huge cut for the court system.

According to the State Court Administrator's Office, the Judicial Branch needs up to \$9.8 million to cover upcoming salary increases. This amount, which assumes 100% funding with no vacancy factor, is equivalent to 8% of the court's operating budget.



Republican legislative leaders and Governor Vilsack will likely try to negotiate the final budget package. Chief Justice Lavorato is working closely with both sides to secure sufficient funds for the court system. In the meantime, cuts are certain – it's just a question of how much.

Contents

Peoples Law School	4
New Faces	7
Volunteer Conference	8
Spotlight	9
District 6 Awards	10
Criminal Update	12
Court Survey	18

Breast Cancer -- Prevention and Detection

By Tamara Barrett

This article is dedicated to a woman I have called friend for over 28 years. She is down to days to live. I wanted to do something I thought would matter, so I decided to narrow my article to prevention and detection and pass it on to you, as that is where we all start.



Anatomy. The breasts have lobes, which have smaller lobules, which end in dozens of tiny bulbs. Lobes, lobules, and bulbs are linked by ducts, which lead to the areola. Fat surrounds these lobes and lobules. There is no muscle in the breast, but muscle is under the breast covering the ribs. Breasts contain blood vessels and lymph vessels, which carry fluid called lymph and lead to lymph nodes. Clusters of lymph nodes are found near the axilla, which are under the arm, above the collarbone, and in the chest, as well as many other parts of the body. Now that we have the

anatomy of things, let's discuss factors for risk.

Contributing factors: No one knows what causes breast cancer, but scientists are aware of some of those persons more likely at risk. Some of these are: prior personal history of breast cancer, family history of

breast cancer, being over age 50, those with a diagnosis of atypical hyperplasia or lobular carcinoma in situ, changes in the genes. Other factors include: women exposed to estrogen, whether made by the body or taken as a drug, age of beginning and ending menstrual cycle, childless or had their first child late in life, women who took DES in the early 1940s to 1971, breast density, have had radiation therapy before age 30, or drink alcohol. An interesting statistic, however, is that most women who develop breast cancer have none of the above risk factors.

Prevention: Breast cancer is not caused by bumping, bruising, or touching. It is not a contagious disease. Studies show that regular exercise decreases the risk in younger women. Extensive studies are being done to see what effect the environment has on increasing the risk.

Diet: Additional studies on diet are ongoing, but nothing definitive has yet surfaced. While eating more fruits and vegetables contributes to better heart health, studies do not indicate that it has an effect on breast cancer one way or the other. However, eating fruits and vegetables regularly does decrease weight gain after menopause, which is linked to breast cancer. A study published in November 1998 indicates that women who eat charred or fried foods increase their risk of breast cancer by nearly 5%. Scientists believe this happens because cooking at ex-

Continued on page 3

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Breast cancer

Continued from page 2

treme temperatures causes the formation of chemicals (carcinogens) that mutate our DNA. Studies show that diet has a greater effect after the fact than in actual prevention.

Alcohol: Alcohol consumption is consistently associated with relative breast cancer risk of about 1.2 or 1.3, but you have to weigh the benefits of a moderate amount of alcohol for the heart versus the potential risk for breast cancer. Scientists believe that, since one in two women die of heart disease, the risk in moderate use of alcohol for breast cancer prevention is minimal.

Miscarriage: Additional studies have shown that having a miscarriage or an abortion may heighten risk, but again the question is unresolved. Genetics: Still other research looks into the genetics that increase the risk of developing breast cancer. Women with a strong family history can have a blood test that shows if they have inherited a change in that particular gene (BRCA1 or BRCA2). Researchers believe they can differentiate between hereditary and nonhereditary breast cancer. Five to ten percent of breast tumors are hereditary. The rest are caused by genetic changes occurring in a woman's life. If you inherit these mutations, your lifetime risk of developing breast cancer is 40 to 85%. Your risk of ovarian cancer goes up as well. Reading about this study was interesting but too lengthy for our purposes here. Suffice it to say that if you have

strong ties to breast cancer in your family, you should seek genetic counseling.

Drugs: Tamoxifen, originally used in the treatment of cancer, is being used now as a preventative medicine for those with a high risk for breast cancer. An important study using rats shows that soy used with Tamoxifen reduces breast tumors.

Detection: As indicated above, if you have a strong family history of breast cancer, you will be one to employ whatever detection devices suggested by your doctor.

Symptoms: A lump or thickening in or near the breast or underarm; change in the size or shape of breast; discharge or tenderness from the areola or the areola's inversion into the breast; skin looks like the skin of an orange; breast is warm, swollen, red, or scaly. Currently, the best way for a woman to participate in the detection of breast cancer is by having regular mammograms, exams by a physician, and self-exams.

Clinical Breast Exam: Your doctor conducts an exam by feeling. Benign lumps may feel different than cancerous ones.

Self-Exam: You only go for a mammogram once a year, maybe once every other year, depending on your doctor, so it's important to know yourself. Conduct self-exams ten days after your period begins each month, feeling especially for things that have

changed since you checked yourself the month before. If you believe there is something different, contact your doctor. It may be nothing, but better safe than sorry.

Mammograms: A mammogram is an x-ray used to look for changes in women who do not have signs of breast cancer. After forty, it is recommended that a woman have a mammogram every 1-2 years, depending on her doctor.

Biopsy: Depending on the results of the mammogram, a biopsy may be suggested. There are three kinds: fine-needle aspiration—thin needle removes fluid and/or cells from the lump. If the fluid is clear, it may not need to be checked by a lab; needle—tissue is removed using a needle from a suspicious-looking area where a lump cannot be felt—the tissue goes to a lab to be checked for cancer cells; surgical—a surgeon cuts out a sample of the lump and again it is sent to the lab to be checked for cancer cells.

Ultrasonography: These high-frequency sound waves can show whether a lump is fluid-filled (not cancer) or a solid mass (may or may not be cancer). Naturally, if a lump is detected, you will proceed with treatment as recommended by your doctor, but you will want to investigate your options yourself.

While this article was written mainly with women in mind, it is interesting to note that breast cancer directly affects more than 1,000 men in this country every year.

Public Flocks to Polk County Peoples Law School

The Polk County Courthouse was open for business the evening of February 27 but it was not business as usual. Hundreds of people came to the courthouse to attend the People's Law School, a unique opportunity for citizens to learn about the law.



Thirteen judges and fifteen lawyers were the professors. The program offered one-half hour classes on eleven topics including employment law, family law, juvenile law, traffic court, injury law, criminal law, probate, consumer protection, small claims and mediation and the court system. The classes were offered from 5:30 p.m. to 8 p.m. and citizens could attend up to six topics of their choice.

According to one of the organizers, Lisa Edwards of the Iowa Trial Lawyers Association, between 250

and 300 people showed up at the courthouse for the event. Lisa said that the comments on the evaluation forms were "extremely positive." Nearly all of those who completed an evaluation said that they would recommend the program to their friends, family and co-workers. One person wrote, "I thought it was going to be boring, but it was interesting, actually, I had fun." Another person commented, "My brain is now packed with more knowledge about our law systems."

The event was sponsored by the following groups: Iowa Trial Lawyers Association, Iowa National Bar Association, Polk County Bar Association, Polk County District Court, Polk County Women Attorneys Association, Judges Association and Polk County Attorneys Office.

The instructors included:

Employment Law – Judge Robert Blink, Catherine Dietz-Kilen, Deb Tharnish, Mikki McGovern

Homeowners and Rental – Judge James Birkenholtz

Probate – Judge Ruth Klotz, Jim Spellman, Dolye Sanders

Traffic – Judge Karen Romano, Harlan Lemmon, Jake Feuerhelm

Personal Injury – Judge Donna Paulsen, Rob Tully, Kerri Plummer

Consumer Protection – Judge Scott Rosenberg, Bill Brock

Small Claims/Mediation – Judge Doug Staskal

Juvenile – Judge Constance Cohen, Jennifer Navis, Vicky Meade

Criminal – Judge Robert Hutchison

Family – Judge Richard Blane, Judge Jacobs, Carol Coppola, Harvey Harrison, Joe Harrison

Overview of Courts – Judge Arthur Gamble, Court of Appeals Judge Michael Streit, Polk County Attorney John Sarcone



New Court Statistics Program Starts May 1

On May 1 clerk of court staff around the state will begin entering case data as part of the new court statistics program. The purpose of the program is to produce monthly statistical reports that court officials can use to measure court performance and track trends. The statistical reports will also be used for judgeship and staff formulas.

A major goal of the effort is to standardize data so that it is uniform throughout the state. The project team developed a manual that includes an array of new standard data entry codes, data definitions, and data entry procedures that were designed to promote uniformity in data

entry. In addition, clerk of court staff will participate in a training program via the Iowa Communications Network this month.

Although clerk of court staff are the key to accurate data entry, judges play an important role in the new program. Judges can help ensure the accuracy of data by including certain key information in their court orders. If the order is the result of a hearing, the order should indicate whether the hearing was contested or uncontested and the nature of the case and the type of hearing. For example, for a criminal case, the order should indicate whether the hearing was an initial appearance, arraignment, trial, motion or sentencing. The order should also indicate the type of

disposition rendered, if any. The order should also indicate key dates such as the days the hearing started and ended and the date the order was signed.

The project team encourages judges to work closely with the clerk of court office to ensure that the clerks are receiving the information they need.

New SCA Assistant

Tina Schweitzer was recently promoted to Administrative Secretary for the State Court Administrator's Office. Prior to her job change, Tina had worked in the Supreme Court Clerk's Office for more than ten years. Before joining the Judicial Branch, she worked for a private investigation firm. Tina graduated from AIB with a legal secretary degree in 1988. She grew up in Washington, Iowa.

As part of her duties, Tina will assist with Rule 200 Reports, child support surveys, the Judicial Qualifications Commission, probate delinquencies report and have contact with judges and district court administrators.



Tina Schweitzer

Retirement



Seated in front is Becky Doty, Court Attendant for Iowa County. Becky retired in July after 15 years of service with the Judicial Branch. Standing behind Becky are co-workers from the clerk's office, Sandy Bine, Sheryl Neal, Clerk, Margaret Deimerly, Teresa Plotz and Phyllis Rosenberry.

Milestones: Service Anniversaries

25 Years

Mary Gray, Judicial Clerk, *Emmet County*.

Bert Ray, Judicial Assistant, *Story County*.

New Faces

Supreme Court: **Julie Cosner**, *Des Moines*, **Elaine Ragan**, *Des Moines*, Administrative Secretaries.

Court Administration: **Jim Evans**, *Des Moines*, Bldg. Project Manager.

ICIS: **Noah Deters**, *Sioux City*, PC Specialist.

District 1: **Amy Kleitsch**, *Dubuque*, **Susanne Lugin**, *Dubuque*, **Carrie Anderson**, *Waterloo*, **James Mahoney**, *Waterloo*, Trial Court Clerks; **Patty Eichenberger**, *Waterloo*, Court Attendant; **Jean Dabney**, *Waterloo*, JCS Secretary; **Nicole Sergeant**, *Waterloo*, Juvenile Court Specialist.

District 2: **Emily Pittenger**, *Marshalltown*, Law Clerk.

District 3: **Debra Heath**, *Sioux City*, **Tommy Namminga**, *Sioux City*, Judicial Clerks; **Sarah Kovarna**, *Sioux City*, **Jennifer Poeckes**, *LeMars*, **Sherri Strom**, *Sioux City*, Juvenile Court Technicians.

District 4: **Shelli Swensen**, *Audubon*, **Paul Bennett**, *Sidney*, **Tracy Burton**, *Montgomery*, Judicial Clerks.

District 5: **Randa Christiansen**, *Carmen Gomez*, *Des Moines*, **Lorrie Swigart**, *Leon*, Judicial Clerks; **Darcy Mettler**, *Des Moines*, Court Reporter; **Sherry Boyd**, *Des Moines*, Case Coordinator; **Michelle Muller**, *Adel*, Legal Assistant.

District 7: **Darcie Ruggeberg**, *Muscatine*, Court Attendant; **Nancy Stolley**, *Muscatine*, **Julie Knight-Weston**, *Davenport*, Judicial Clerks.

District 8: **Mary Moyes**, *Keokuk*, **Kim Humphrey**, *Keokuk*, **Janice Daugherty**, *Ft. Madison*, **Jennie Reschly**, *Washington*, Judicial Clerks.

CASA Volunteer Conference Highlights

More than one hundred CASA volunteers and staff gathered in West Des Moines on March 31 for the 2nd Annual CASA Volunteer Conference. The conference included presentations by local court officials, representatives of the national CASA organization and child welfare experts and, at the end of the day, inspirational remarks by special CASA volunteers. The purpose of the program was to provide volunteers with an opportunity to share their experiences and learn from each other, to provide special training, and to say "thanks" to CASA volunteers.

Chief Justice Louis Lavorato started the meeting as the keynote speaker. Chief Justice Lavorato praised CASA volunteers for the added value they bring to the child welfare system. Last fiscal year, over 500 Iowa CASA volunteers worked with nearly 1000 abused and neglected children.

Judge John Mullen spoke to the group about reasonable efforts and the Adoption and Safe Families Act. Judge Mullen helps train CASA volunteers in the 7th Judicial District. Said one enthusiastic volunteer, "[His presentation] was absolutely wonderful, [it's] obvious he has the child's welfare first."

Dr. Beth Troutman, a child psychiatrist at University of Iowa Hospitals, discussed attachment issues and psychological needs of children in the court system.

A panel of three representatives of the national CASA organization, Terene Bennett, Joni Tamalonis, and Brian Aguilar, brought a national perspective to the meeting.

At the end of the day, meeting participants heard from Laura Fitzgerald, Iowa CASA of the Year 2000, and Jill Viau, Child Advocate of the Year, about their experiences as CASAs. According to Lisa Green, Director of Friends of Iowa CASA, Laura's and Jill's stories moved people to tears.



District Associate Judge John Mullen, District 7, speaks with Michalene Christiansen, Native American CASA coordinator in District 3 during a break at the 2nd Annual CASA Volunteer Conference.



New Bench Press Spotlight

District 2 Employees

We've changed the format of our Spotlight feature from articles to photographs.

Each issue we plan to showcase two or three photographs of court groups. If you would like a certain office group, courthouse gang or committee to be featured in the Spotlight, please send us a photograph of the group, identify the people in the picture, and tell us the names of the people who are part of the group but are not in the photograph.



District Court Administrator's Office in Fort Dodge

Front row, left to right: JoAnne Hagen, secretary; Mary Steil, court accountant/auditor; Kellie O'Leary, case coordinator. Back row, left to right, Mary Kosanke, case coordinator; Pam Conkling, secretary; David Hayward, District Court Administrator. Absent, Billie Determann, district finance and personnel manager.



Webster Clerk of District Court Office in Fort Dodge

Front row, left to right, Pam Pingel, Jud Clk III; Brenda Ivory, Jud Clk II; Jeri Collins, Trial Court Supervisor. Second row, left to right, Beth Grebner, Jud Clk II; Renee Caquelin, Jud Clk II; Jennifer Robertson, Jud Clk II; Bill Watson, Jud Clk II. Third row, left to right, Judy Olson, Jud Clk III; Sue Minikis, Jud Clk II; Laura Jacobson, Jud Clk II; Pat Freund, Jud Clk III. Absent, Jan Knutson, Acting Webster Clerk of District Court; Janet Clark, Jud Clk II; Brenda Heilskov, Jud Clk I.

6th District Awards

On February 19, the 6th District honored employees and others at an awards ceremony in the Linn County Courthouse. Co-workers and special guests, as well as family members and friends of the award winners, attended the afternoon ceremony. Chief Judge David Remley presided.

Hamza Omar, Iowa City, received the "Friend of Court" award. Omar is a juvenile court liaison for Southeast Jr. High in Iowa City. He has held that position for



Hamza Omar, "Friend of Court"

over three years. The principal for the school described Omar as someone "who arrives early, leaves late and works many of his lunch hours for children." When he's not working, Omar donates much of his time to organizing activities for kids including chess club, Tae Kwon Do instruction, and Star Trek club, and tutoring kids. He is regarded as a person who never gives up on even the most difficult kids and is always looking for ways to make a connection with students who are having a difficult time.

Court Attendant William "Bill" Long, Marion, was awarded the Public Service Award. According to Carroll Edmondson, District Court Administrator for the 6th District, "Bill always has a positive attitude," which promotes respect for the judiciary. "But it is more the quiet, but firm and respectful way in which he deals with the public that helps us look professional



William "Bill" Long, Public Service Award

and worthy of the public's respect." Edmondson added, "Anyone interested in a model of public service excellence should spend a day with Bill Long."

The "Teamwork Award" was presented to **Sue Glandorf, Cedar Rapids**, for her work with the "Rocket Docket." Sue works with the Department of Transportation, the County Attorney's office, the clerk's office, lawyers, judges and defendants, to coordinate the docket for the district



Sue Glandorf, "Teamwork Award"

associate court. District Associate Judge Nancy Baumgartner said, "We DAJs couldn't function without her."

Ed Burroughs was recognized as "Employee of the Year." Burroughs works in



Ed Burroughs, "Employee of the Year."

the Linn County Clerk of Court Office, primarily in the juvenile division. Linn County Clerk of Court Sharon Modracek

praised Ed for “going the extra mile” to help families involved in court proceedings. “He gives a very positive impression of public employees and the Judicial Branch,” said Modracek. “Ed continually works to improve office procedures and increase efficiency. He has also taken it upon himself to monitor juvenile cases to prevent them from falling through the cracks.”



Norm McElwain, Distinguished Service

Juvenile Court Officer Norm McElwain, a twenty-two year veteran of the court system, received the award for distinguished service. “Norm has assumed a leadership role within the juvenile court office and the community,” said Carroll Edmondson. “He started restitution programs and restorative justice programs before they became part of our vocabulary.

New JCOs flock to Norm for advice and assistance because of his reputation and wealth of knowledge he has about juvenile court.”

The following employees were recognized for dedicated service:

35 years – Sonja Leahy, Linn County

30 years – Yvonne Burkhart, Benton County

25 Years – Tom Buchanan, Iowa County, **Barbara Bigelow**, Johnson County, and **Susan Griffith, Susan Glandorf, Debra Shields, and Ronda Fry**, all of Linn County

20 years – Lori Mulherin, Bernie Bordignon, Sylvia Dawson, Cynthia Mehl, Caryol Frericks, Candace Bennett and Roxanne Repstein, all of Linn County, **Judith Mann**, Benton County, and **Judge Vern Robinson**, Johnson County.

10 years – Koleen Hoffman, Johnson County, **Valerie Dufoe**, Linn County, and **Kim Kurth**, Jones County.

L. Jay Stein, Iowa City, and **John Monroe**, Cedar Rapids, were specially recognized for their service as hospitalization referees. **Supreme Court Justice Jim Carter** and **Court of Appeals Judge Van Zimmer** were specially recognized for their contributions as former district court judges and for their continual support of the district.

Iowa Judicial Branch Awards

Later this year, the Iowa Judicial Branch will be soliciting nominations for its statewide award program. Look for an announcement in a future issue of the Bench Press.

Recent Iowa Criminal Decisions

By Ann E. Brenden



Ann Brenden, Assistant Attorney General, is the Editor of the *Iowa Criminal Law Handbook* (2d ed. 1994). Ann's synopses of the cases are also contained on the Iowa County Attorney Association's web site. They can be searched both chronologically and by subject at www.iowa-icaa.com

February 2001

State v. Button, ___ N.W.2d ___ (Sup. Ct. No. 99-1200) (Iowa 2/14/2001). *[1]*

Harassment: proof of intent when defendant is accused of harassing his arresting officer. Substantial evidence of defendant's intent to threaten, intimidate or alarm an arresting officer existed by virtue of: (1) defendant's statement that he would have "blown [the officer's] brains out" if they were pheasant hunting, (2) a threat to "shoot [the officer]" if defendant was placed in his car, and (3) derogatory remarks about defendant's sons. Fact that defendant was in handcuffs during some of this time does not negate their meaning.

[2] **Harassment: purposeful contact: contacted not initiated by defendant.**

Although the victim/police officer initially made contact with defendant, defendant's subsequent behavior turned the encounter into his own "purposeful acts" constituting harassment, including threats and uncooperativeness. *[3]* **Harassment: freedom of speech claim rejected.**

Statutes that punish speech amounting to "true threats" (determined by totality of the circumstances) are not unconstitutional.

State v. Daly, ___ N.W.2d ___ (Sup. Ct. No. 98-1968) (Iowa 2/14/2001). *[1]* **No**

waiver of adverse pretrial ruling by presenting it on direct. Defendant does not waive his or her right to object to the court's admission of Rule 609 impeachment evidence by bringing it up during his own direct examination after having lost a pretrial motion to exclude the evidence from trial. *[2]* **Relevance: court abuses discretion by failing to balance the probative value against the likely unfair prejudicial effect.** "In determining whether the probative value of evidence of a prior conviction outweighs its prejudicial effect, the trial court should consider such factors

as: (1) the nature of the conviction; (2) the conviction's bearing on veracity; (3) the age of the conviction, and (4) its tendency to improperly influence the jury."

State v. DeCamp, ___ N.W.2d ___ (Sup. Ct. No. 00-0101) (Iowa 2/14/2001). *[1]*

OWI Thirds: what is meant by prior violations of "this section". Defendant's prior OWI convictions under former Iowa statutes not bearing the same section numbers as the present one were valid predicate offenses notwithstanding the enhancing statute's reference to prior violations of "this subsection". *[2]*

Prospectivity of enhancement statutes.

Recidivism laws do not define a new offense or add elements to existing crimes, nor do they punish for an old offense. They merely enhance the punishment for a current offense. Whether a new statute using old offenses to enhance a current crime applies in a given situation depends on whether the current offense occurred after the date the enhancing statute became effective. The relevant "retrospective vs. prospective application" question is not when the priors occurred, but whether the legislature intended to include them in the enhancement scheme. Prior OWI convictions are intended to be used to enhance subsequently-occurring OWIs.

State v. Houts, ___ N.W.2d ___ (Sup. Ct. No. 99-1792) (Iowa 2/14/2001). **Failure to appear: while awaiting sentence or pending appeal after conviction.**

Defendant who pled guilty but then failed to appear either for his bond review hearing or for sentencing was properly chargeable with two counts of failure to appear under section 811.2(8) (1999). A guilty plea is a "conviction" for purposes of this statute; the legislature intended to punish as a felony a failure to appear while awaiting sentence on any charge (felony or misdemeanor).



State v. Kirby, ___ N.W.2d ___ (Sup. Ct. No. 99-1676) (Iowa 2/14/2001). [1] *Probation revocation: due process requirements.* Although probation revocation proceedings can be informal and even summary, revocation involves a serious loss of liberty requiring the provision of due process. Specifically, the fact finder must provide a written statement, regarding the evidence relied on and reasons for the revocation, or its functional equivalent: an oral statement of such findings on the record, made in defendant's presence in open court. Probation: compliance with the law a condition. Whether or not expressed in the probation instructions, a fundamental condition of any probation is that the probationer shall not violate the law. [2] *Burden of proof – revocation proceedings.* Proof beyond a reasonable doubt is not required in revocation proceedings; the requisite degree of proof is a preponderance of the evidence. [3] *Failure to give reasons for selecting particular sentence instead of another.* The district court does not have to elaborate on its reasons for rejecting alternative forms of punishment; instead, there must be compliance with R. Cr. P. 22's requirement of a statement of reasons for the sentence imposed.

State v. Lumadue, ___ N.W.2d ___ (Sup. Ct. No. 99-1898) (Iowa 2/14/2001) [1] *Sentencing: allocution denied.* Defendant did not validly waive the right of allocution by the following phrase contained in his written stipulation to a bench trial: "I waive personal conversation with the Court concerning this charge." Whatever was meant by the phrase in the context of a jury trial waiver, it had no bearing on post-trial sentencing proceedings including allocution. [2] *Sentencing: reasons for sentence not given.* Neither the transcript nor the following boilerplate written language

"[t]he Court has determined that this sentence will provide reasonable protection of the public. Probation is denied because it is unwarranted" satisfied R. Cr. P. 22(3)(d) requirement that the court state on the record its reason for selecting the particular sentence.

State v. McDowell, ___ N.W.2d ___ (Sup. Ct. No. 99-0227) (Iowa 2/14/2001) [1] *Possession of firearm enhancement element of drug charge: constructive possession.* When one's constructive possession of a weapon is based on joint possession of the premises on which the weapon is found, the state must demonstrate defendant's knowledge of the presence of the item. Knowledge can be demonstrated as actual knowledge or by incriminating circumstantial evidence. Where no such evidence is present and defense counsel did not move to set aside the jury's finding on that count, counsel was ineffective and defendant must be resentenced so as to exclude the accompanying enhancement. [2] *Judges should instruct on knowledge element.* District courts are admonished to include the element of knowledge of the (enhancement) firearm's existence and location, in instructions defining immediate possession or control of a firearm.

State v. Talbert, ___ N.W.2d ___ (Sup. Ct. No. 00-0146) (Iowa 2/14/2001). [1] *Proof of prior out-of-state conviction: insufficient.* State's proof of defendant's prior OWI offense in Tennessee failed when the only proof was a docket entry that did not identify the offense by code section, along with a photocopy of the Tennessee Code Annotated's OWI offense, section 55-10-401. [2] *Preservation of error by State.* Where state appeals a lower court's adverse ruling, it cannot raise issues not raised below. Burden of proof: OWI priors, for enhancement purposes. "[T]he state must prove OWI convictions for enhanced OWI purposes beyond a

reasonable doubt before the court can impose the enhanced penalties."

March 2001

State v. Hickman, ___ N.W.2d ___ (Sup. Ct. No. 99-1576) (Iowa 3/21/2001) *Lesser-included offenses: willful injury as included within first-degree.* The "purposely" as used in first degree robbery's element of "purposely inflicted or attempted to inflict a serious injury" is similar enough to willful injury's element of "intended to cause serious injury", all other element of the latter being subsumed in the greater, as to make willful injury a lesser included offenses of first-degree robbery as charged.

State v. Hook, ___ N.W.2d ___ (Sup. Ct. No. 99-1340) (Iowa 3/21/2001) [1] *Guilty plea challenge not forsaken by failure to file motion in arrest where court did not inform of that necessity.* Error was preserved on defendant's challenge to earlier guilty plea notwithstanding his failure to file a motion in arrest of judgment prior to sentencing. Defendant had filed a written plea of guilty, which was supplemented by questions from the court. The court erred in failing to address Rule 23 and its repercussions with the defendant, relying instead on an affirmative answer from counsel as to whether he "took up Rule 23" with the defendant. While the colloquy requirements of Rule 8(2)(b) may be waived in a plea to a serious or aggravated misdemeanor, it does not waive the Rule 23 requirements: for felonies, aggravated or serious misdemeanors. [2] *Full*

Continued on page 14

Criminal Update

Continued from page 13

oral colloquy required for guilty plea. A written guilty plea to a felony, even when accompanied by partial questioning of the defendant, is not an adequate substitute for the full oral colloquy required by Rule 8(2)(b) for pleas to a felony.

State v. Horton, ___ N.W.2d ___ (Sup. Ct. No. 99-1286) (Iowa 3/26/2001) *Probable cause for arrest of passenger in car where marijuana in plain view.* Probable cause existed to support the arrest of a passenger in a vehicle wherein marijuana roaches were observed in plain view in the ashtray. "Close proximity to contraband, especially when it is in plain view, is sufficient to justify a suspect's arrest, at least for further investigation." Note: defendant was not deemed to have consented to the search by complying with the officer's request that she empty her pocket.

State v. Sanders, ___ N.W.2d ___ (Sup. Ct. No. 00-704) (Iowa 3/21/2001) *Discovery by State: county attorney subpoenas.* County attorney may not use Iowa R. Cr. P. 5(6) subpoena to obtain defendant's medical records after the charge has been filed. While county attorney subpoenas can be used after charges are brought, Rule 13(3) requirements must be met if the subpoena is used to obtain materials under defendant's control. This defendant's medical records (the results of a blood test undertaken for treatment) were deemed to be under his control by virtue of the nature of hospital records. The State was therefore required to meet the prerequisites of Rule 13 but the record indicated no such demonstration. The district court erred in permitting the State to subpoena the records.

State v. Tippett, ___ N.W.2d ___ (Sup. Ct. No. 99-0151) (Iowa 3/21/2001) *Failure to register as a sex offender.* The "willful" element of Failure to Register as a Sex Offender requires the State to show a voluntary and intentional violation of a known legal duty. While ignorance of the

law is generally no excuse, the legislature may define a crime to require knowledge. Knowledge of criminality is a particularly appropriate element when the charge is based on the failure to perform an act that is required only because of a statutory mandate. This "willful" offense falls in that category. As such, the State must prove the accused knew that the law required registration. This burden was not satisfied where the releasing state's law (at the time of release) did not specify defendant had to register in another state if he moved there, any "probability" that he was so advised was based on an unsupported presumption, and the fact that defendant moved around a lot to avoid registration did not prove that he knew the predicate fact: that he had to register.

UNITED STATES SUPREME COURT CRIMINAL CASE

FEBRUARY AND MARCH, 2001

Illinois v. McArthur, 531 U.S. ___ (U.S. Sup. Ct. No. 99-1132) (U.S. 2/20/2001). *Two-hour warrantless detention of suspect outside his house, while arrest warrant was being procured, did not violate 4th Amendment.* The restriction was considered reasonable because (1) police had probable cause to believe defendant's home contained unlawful drugs, had spoken to defendant's wife and assess her credibility; she had firsthand opportunity to observe defendant's behavior with respect to the drugs at issue; (2) the police had good reason to fear that unless restrained the defendant would destroy the drugs before a warrant could be obtained; (3) the police made reasonable efforts to "reconcile their law enforcement needs with the demands of personal privacy", preventing defendant only from entering the trailer unaccompanied and leaving his belongings intact until the warrant was issued; and (4) the restraint occurred for a limited period of time: two hours. "Given the nature of the

intrusion and the law enforcement interest at stake, this brief seizure of the premises was permissible."

Ohio v. Reiner, ___ U.S. ___ (U.S. Sup. Ct. No. 00-1028) (U.S. 3/19/2001). *Court reverses Ohio Supreme Court's ruling that a witness who denies all culpability does not have a valid Fifth Amendment privilege against self-incrimination.*

While the protection extends only to witnesses who have a "reasonable cause to apprehend danger from a direct answer" (an inquiry for the court) "we have never held, as the Supreme Court of Ohio did, that the privilege is unavailable to those who claim innocence."

Note: These summaries do not constitute an opinion of the Iowa Attorney General, the Iowa Department of Justice or the Judicial Branch. The descriptions are only intended to serve as a guide to identifying cases of interest. They are not a complete statement of the case.

CASA Fundraiser



Paulette Clemens is a CASA volunteer who created and donated a handmade baby quilt to benefit the Friends of Iowa CASA Foundation. The quilt raised more than \$250 in raffle tickets that will help support the work of CASA volunteers. Paulette said she created the quilt because, "It is one way I could support the work of CASA doing something I enjoy."

Iowa Public TV Show Features Court Sculptures

Iowa Public Television is airing a tour of the magnificent grotesques in Des Moines. Host Morgan Halgren along with Very Special Arts of Iowa artist, Jan Fleming, will take you on a breathtaking tour featuring the Polk County Court House and the Iowa State Capitol.

The plethora of magnificent Grotesque faces are an historic art treasure. The incredible treasure of historic and magnificent art in the Court of Appeals conference room and adjoining "Agriculture" Room are important for the public to see and appreciate.

The program will air on Friday, April 27 at 8:30 p.m. and Sunday, April 29 at 7:30 p.m. This project is supported by Very Special Arts of Iowa and the Iowa Arts Council.



The head of a dog is in the former Agriculture Room, now the reception area for the Court of Appeals.



"Green Man" can be seen in the Court of Appeals conference room.

State Library: On-line Services and Quarters Remodeled

An open house was held on Thursday, March 15, at the State Library of Iowa. Library staff conducted guided tours of the east wing and shared details that were part of the restoration process. The library has business, public policy and management magazines; videotapes, books; and newspapers available. A full service medical library is available for statewide use by medical personnel without easy access to information. State employees are welcome to check out the materials available or use conference rooms. For employees outside the Des Moines area, materials can also be mailed. For specific questions call 1-800-248-4483.

The State Library has a web site www.silo.lib.ia.us/espgovt.htm designed especially for state government employees. Some of the sites and resources include:

- State of Iowa Home Page/Iowa Access
- Iowa Attorney General Legal Resources

- Iowa Law
- Iowa Official Register 1999-2000 (Red Book)
- Stateline.org "Your source for state news"
- Ask a Librarian (State Library of Iowa)
- Findlaw
- Statistical Abstract of the United States
- Refdesk.com
- Electric Library



Reading area overlooks Grand Avenue facing south.



Original floor of the rotunda now over 100 years old.

7th District Replaces Mailed Notices with E-mail

Earlier this month the United States Post Office announced that it is considering dropping Saturday mail service as a way to reduce costs. The Postal Service blamed increased competition, particularly e-mail, as one of the factors for its consideration of dropping Saturday delivery. Was the 7th Judicial District of Iowa the last straw?

In March the 7th Judicial District began to send certain court notices to attorneys by e-mail rather than through the Postal Service. The reasons for the switch, according to District Court Administrator Tom Betts, were the “high speed, efficient, rapid-fire” qualities of “e-noticing.”

“We’re still in the early stages, sending about 50 trial setting conference notices a

month for Scott, Cedar and Jackson County cases,” reported Betts. “Eventually we’ll send 300 a month. We want to expand its use so that the case schedulers in Muscatine and Clinton can start using it.”

The district’s e-mail directory contains the addresses of 300 attorneys. The district is responsible for maintaining its directory. Although it’s a big job, Betts said, “We are glad to do this.”

The Postal Service is expected to ask for another rate increase for first-class mail, to take effect next year, but that probably doesn’t worry Tom Betts.



IOLTA Grant Applications

The Iowa Supreme Court Lawyer Trust Account Commission is accepting applications for grants under the Interest on Lawyers’ Trust Account (IOLTA) program. The Commission anticipates that it will have approximately \$1 million available for the upcoming grant period that runs from July 1, 2001 through June 30, 2002 for projects providing legal services to the poor in civil cases and for other public purpose projects related to improving the administration of justice in Iowa.

Applications for one-time law-related education projects or other applications for seed money to establish new programs are encouraged. Organizations wishing to submit requests for grants will be able to

obtain application forms by contacting the Lawyer Trust Account Commission, State Capitol, Des Moines, Iowa 50319. the telephone number is (515) 246-8076.

All grant applications must be completed and received by the Commission no later than **4:30 p.m., Friday, April 27, 2001**. The Commission will then review the applications and seek approval of the Iowa Supreme Court for awarding the grants. Announcement of grant awards is expected in June 2001.

The Lawyer Trust Account Commission was created by the Iowa Supreme Court in 1985 to receive interest on lawyers’ pooled trust accounts and use these funds primarily to provide legal services to the

poor in civil cases. Lawyers’ pooled trust accounts hold clients’ funds that are so small in amount or held for such a brief period that it is not possible for the funds to economically benefit the individual clients. Previously, attorneys’ trust accounts earned no interest. To date, the Commission has awarded grants totaling over \$13 million.

Iowa Judicial Branch Asks Jurors and Customers to Evaluate Court Services

On April 2, the Iowa Judicial Branch launched a statewide effort to evaluate customer service. The courts will be surveying jurors and gathering feedback from other court users. This will be an opportunity for the public to assess the quality of the courts' performance, as well as to offer suggestions for change and improvements.

The purpose of the juror survey is to gather information about the quality of jury service. The courts will survey persons who served on a jury and those who appeared for jury duty but who did not serve. The survey asks general questions about a person's experience with jury service such as the length of jury duty or the number of days a person was on call, whether a person had previously served as a juror or been called for service, and whether a person lost income because of service. The survey will also ask jurors to rate certain aspects of service such as personal safety, physical comforts, eating facilities, treatment by staff, orientation and parking facilities.

In urban counties (those with populations of 20,000 or more), the courts will survey jurors in April and October. In rural counties, the courts will survey jurors who serve on the first trial of each quarter up to a maximum of three jury trials a year.

A subcommittee of the Judicial Branch Public Education and Media Relations Advisory Committee designed the survey based upon a questionnaire from the National Center for State Courts.

In addition to the juror survey, the courts are soliciting feedback from people who come to the clerk of court offices for services. Questionnaires are now available at the counter of all clerk of court offices. The courts encourage the public to complete the questionnaire and return it to the clerk. The courts want to know whether a person was treated with courtesy and respect by the clerk's staff, whether the person received the information or service requested within a reasonable time, if the person was satisfied with the service or information provided, the

type of case involved and the type of information or service requested, and whether the person has ideas for improvements.

During the week of September 10, clerks will make a special effort to hand out the form to everyone who comes to the office counter. This exercise is designed to increase the number of people who complete the questionnaire.

Both the juror survey and the customer questionnaire include questions about age, race, sex and employment that are voluntary and designed to provide the court system with information about its customer base. In addition, persons who complete either form can choose to remain anonymous or to provide their name.

In October, the courts will survey Iowa lawyers. That survey is still under development.

The Iowa Judicial Branch will publish a report sometime next year with its findings from the surveys and questionnaires.

Law Day 2001: Protecting the Best Interests of Our Children

Law Day is May 1. And there's still time to organize a Law Day celebration. This year's theme is "Celebrate Your Freedom: Protecting the Best Interests of Our Children." For help planning your Law Day celebration go to <http://www.abanet.org/publiced/lawday/home.html>. You can download or print a Law Day Planning Guide in its entirety or only the pages you want.



Computation of District Court Judgeship Formula Reflects Drop in Caseload

According to the State Court Administrator's Office, the most recent application of the state's judgeship formula shows that the state needs 135 district court judges. The state presently has 116 district court judges.

Last year, the application of the formula showed a need for 138 district court judges, three more than called for this year. The change reflects the recent decrease in the number of criminal cases filed in the

state. In 1999, over 92,000 indictable criminal cases were filed; in 2000 there were 79,705. The drop in the caseload was due in large part to the Legislature's reclassification of certain crimes from indictables to simple misdemeanors.

Based upon the latest application of the formula, Districts 1B, 3A, 5B, and 5C each lost one judgeship while District 7 gained one.

The present formula may soon become a thing of the past. Any day now, the National Center for State Courts is expected to submit a report that contains the Center's recommendations for a new judgeship formula that will cover all levels of the trial court. The Center has been studying the state's judgeship formula and judges' workloads since last summer.



Grundy County Courthouse

Courthouse Facts

- Grundy County was first organized in 1856
- The county seat is Grundy Center
- In 1857 a building for county business was built and it was known as the "Old Cheese Box". It was the only county courthouse in the state of Iowa that was octagonal in shape. This eight-sided building served the county for forty years until the second and present courthouse was finished in 1891.
- This imposing stone castle was constructed for \$45,532.48. The contractor used the best materials and workmanship so that even today, the courthouse is in nearly its original state.